FILED OCTOBER 7, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 585

THE UNITED STATES OF AMERICA, APPELLANT

vs.

LEM HOY, ALIAS LIM HOY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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2 In the District Court of the United States in and for the Southern District of California, Central Division

No. 18556

UNITED STATES OF AMERICA, PLAINTIFF

vs.

LEM HOY, ALIAS LIM HOY, DEFENDANT

Information

Filed June 3, 1946

(U. S. C., Title 8, Section 139 Assisting migration of contract laborers)

The United States Attorney charges:

On or about February 7, 1946, at Los Angeles County, California, within the Central Division of the Southern District of California, defendant, Lem Hoy, alias Lim Hoy, did unlawfully induce, assist, encourage, and solicit, and did attempt to induce, assist, encourage, and solicit, certain alien persons to migrate to the United States as contract laborers, to wit: Camilo Cortez-Becerra, Ignacio Cortez-Becerra, and Sebastian Cortez-Torres, who were not alien contract laborers duly entitled to migrate to the United States under the Act of February 5, 1917, or to enter or migrate to the United States under any other law of the United States, as the defendant then and there well knew.

CHARLES H. CARR,
United States Attorney.
Howard V. Calverley,
HOWARD V. CALVERLY,
Assistant United States Attorney.

[File endorsement omitted.]

3 In the District Court of the United States

[Title omitted.]

Waiver of indictment

Filed June 3, 1946

Lem Hoy, the above-named defendant, who is accused of violating Title 8, Section 139, United States Code, being advised of the nature of the charge and of his rights, hereby waives in open

court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

LIM HOY,
Defendant.
V. P. LUCAS,
Counsel for Defendant.

Dated June 3, 1946.
[File endorsement omitted.]

4 In the District Court of the United States
[Title omitted.]

Motion to dismiss

Filed June 4, 1946

Now comes the defendant herein, Lim Hoy, and says that the information herein is not sufficient in law to require the defendant to plead thereto and that this defendant moves the Court to dismiss the information and says to the Court the following:

That Section 139 Title 8 of the United States Code has been directly repealed by the provisions of Section 1355, Sub-Division (g) of Title 50 War Appendix.

V. P. LUCAS,
Attorney for Defendant.

June 5, 1946.

5 In the District Court of the United States
[Title omitted.]

Notice of motion to dismiss information

June 5, 1946

To the UNITED STATES OF AMERICA and CHARLES H. CARR, its Attorney:

Please take notice that upon the information herein and upon all the briefs, processes, pleadings, papers, and proceedings taken herein and upon this notice, an application will be made by the defendant at a stated term of the United States District Court of the Southern District of California, Central Division, to be held at the United States Court House at Los Angeles, California, on the 10th day of June 1946, before Honorable Leon Yankwich at the opening of the Court on that day and as soon thereafter as counsel can be heard for an order to dismiss the information upon the ground that:

1. Said information does not state any offense known to the law.

6 2. That the section of the law upon which said information is found has been expressly repealed by the Provision of Section 1355, Subdivision (g) of Title 50, War Appendix.

Respectfully submitted.

V. P. LUCAS,
Attorney for Defendant.

June 5, 1946.

Received copy of the within motion to dismiss this 4th day of June 1946.

CHARLES H. CARR,
By MARY WENTWORTH,
Attorney for Plaintiff.

7 In United States District Court

[Title omitted.]

Argument and submission

June 10, 1946

This cause coming on for hearing on motion of defendant to dismiss, filed June 4, 1946, and for arraignment and plea of defendant Lem Hoy, alias Lim Hoy; Howard V. Calverley, Esq., Asst. U. S. Attorney, appearing for the Government; V. P. Lucas, Esq., appearing for the defendant:

Attorney Lucas argues in support of motion to dismiss.

It is ordered that this cause be, and it hereby is, continued to June 17, 1946, for ruling on motion and for arraignment and plea of the defendant.

8 In the District Court of the United States

[Title omitted.]

Notice of motion for bill of particulars

Filed June 13, 1946

[File endorsement omitted.]

To Charles H. Carr, United States Attorney:

Please take notice that, upon the information on file herein and upon this notice and all the records and pleadings in said case and upon all the proceedings heretofore had herein, a motion will be made in the court room of Honorable Leon R. Yankwich at the United States District Court House and Post Office at Los Angeles on the 17th day of June 1946, at the opening of court on that day or as soon thereafter as counsel can be heard for an order directing

the United States Attorney to serve and file a bill of particulars in the above described information particularly setting forth the following:

1. How and in what manner the said defendant did unlawfully induce, assist, encourage and solicit the persons named in the indictment to migrate to the United States.

(a) If said alleged inducement or solicitation was in writing that a copy of said writing be contained in the bill.

(b) That if said alleged inducement or solicitation was oral then that the words spoken or used be set forth in the bill.

2. That if the alien persons mentioned in said bill as having been induced to migrate here under contract as laborers that a copy of said contract be contained in said bill or attached thereto.

9 3. That the Government specify in said bill the person or persons with whom said alien contract laborers had entered into a contract.

4. That the Government be required to specify in said bill whether or not its contention is that said aliens were under contract or not under contract at the time of their alleged entry.

(a) That if it is contended that they were under contract the name of the other contract party or parties.

5. That the Government be required to state the time when and the place where said alleged alien persons entered the United States.

Dated this 12th day of June 1946.

V. P. LUCAS,
Attorney for Defendant.

Received copy of the within notice of motion this 13 day of June 1946.

U. S. ATTORNEY,
By V. B.
Attorney for Plaintiff.

10 IN THE DISTRICT COURT OF THE UNITED STATES

[File endorsement omitted.]
[Title omitted.]

Bill of particulars

Filed June 27, 1946

Comes now the United States of America, plaintiff, and pursuant to order of Court made herein, furnishes to the defendant the following particulars as requested by the defendant in paragraphs 1 to 5 inclusive of Notice of Motion for Bill of Particulars to which reference is hereinafter made:

I. In answer to the question contained in paragraph 1, plaintiff specifies that the defendant sent and caused to be sent a letter to the persons named in the information, which letter was received by them.

II. In answer to the request contained in paragraph 1a, plaintiff attaches hereto, marked exhibit 1, a copy of the letter mentioned in the preceding paragraph hereof.

11 III. In answer to the request contained in paragraph 1b, plaintiff specifies that the inducement and solicitation was not oral.

IV. In answer to the request contained in paragraph 2, plaintiff specifies that no express contract is involved. The persons named in the information are contract laborers within the meaning of Section 136 (h), Title 8, United States Code, in that they were offered and promised employment in this country by the defendant.

V. In answer to the request contained in paragraph 3, plaintiff refers to paragraph IV hereof.

VI. In answer to the request contained in paragraph 4, plaintiff specifies that it does not contend that the aliens named in the information were under contract at the time of their alleged entry.

VII. In answer to the request contained in paragraph 4a, plaintiff refers to paragraph VI hereof.

VIII. In answer to the request contained in paragraph 5, plaintiff specifies the time and place of the aliens entry into the United States as on or about February 25, 1946, near Calexico, Imperial County, California.

JAMES M. CARTER,
United States Attorney,
ERNEST A. TOLIN,
Assistant U. S. Attorney,
Chief Criminal Division.
By Howard V. Calverly,
HOWARD V. CALVERLY,
Assistant U. S. Attorney.

12 *Exhibit one*

TRANSLATION FROM THE SPANISH LANGUAGE

(Written in pencil on two sides of sheet of lined writing paper.)

"FEBRUARY 7 of 1946.

Mister Camilo Cortez and Ygnacio Cortez. Esteemed friends I give reply to your very attentive (favour) dated the 29 of the past month of January in which you inform me that you are well which makes me very happy with regard to that which you tell me in your letter, that you are very willing to come to help me but

that you are afraid, I tell you to come as soon as you receive my letter and it makes no difference if you pass as contraband (smuggle in), as wherever the Immigration catches you I will get you out with a bond. And bring with you another companion because I want three workers. Because to go to Calexico is very far, it is three hundred miles and I do not know the way (road), but that is the most practical as soon as you arrive in Mexicali find the ranch of a man named J. Jesus Chumasero and there they will inform you of a man who will bring you here to me. (He) charges twenty five dollars (but) it makes no difference what it costs come immediately and I will arrange everything. That is the best information which I can give you therefore come without delay. I presented your remembrances to my father and to the Romero family, and I am extremely grateful that you answered my letter, and that is all I have to say for now. Without more, your friend. Lim Hoy."

Written in English at bottom of letter, in ink and in different handwriting: "Lim Hoy 185th St. & Prairie Ave. Redondo Beach, California. East of KNX radio station."

Attached to letter is an envelope bearing address: "Mister Camilo Cortez, Empalme de Orenday, Santa Cruz de Astillero, Jalisco, Mexico"; bearing postmark "Redondo Beach, Calif., Feb. 7, 1946, 6 PM," and cancelled 8 cents Air Mail stamp. Also attached is an un-postmarked and un-stamped Air Mail envelope bearing the address: "Lim Hoy, Rt. 1, Box 135A, Redondo, Calif., U. S. A."

SAN PEDRO, CALIFORNIA,
March 1, 1946.

I hereby certify that the foregoing is a true and correct translation from the Spanish into English of a letter marked "HBH #2" for identification, and that the punctuation marks and words in parenthesis were supplied by me.

H. B. HANNAH,
Examining Inspector.

18 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail

Jean Kirby, being first duly sworn, deposes and says: That (s)he is a citizen of the United States and a resident of Los Angeles

County, California; that (her) business address is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on June 27, 1946, (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Bill of Particulars addressed to Mr. V. P. Lucas, Attorney at Law, 215 West Fifth Street, Los Angeles, California, his last known address, at which place there is a delivery service by United States Mails from said post office.

JEAN KIRBY.

Subscribed and sworn to before me, this 27th day of June 1946.

[SEAL]

EDMUND L. SMITH,
Clerk, U. S. District Court,
Southern District of California.

By EDW. F. DREW,
Deputy.

14 In United States District Court

[Title omitted.]

Arraignment and Plea

June 17, 1946

This cause coming on for (1) ruling on motion of the defendant to dismiss, (2) hearing motion of the defendant for Bill of Particulars, and (3) for arraignment and plea of defendant Lem Hoy, alias Lim Hoy; H. V. Calverley, Assistant U. S. Attorney, appearing as counsel for the Government; V. P. Lucas, Esq., appearing as counsel for the said defendant, who is present on bond filed in Case No. 18,381-Crim.:

Attorney Lucas argues in support of motions, Attorney Calverly argues in reply, and it is ordered that motion to dismiss is denied, but that the Government prepare within ten (10) days Bill of Particulars as requested by the defendant.

The defendant upon arraignment states his true name is Lim Hoy, and his attorney having waived reading of the Indictment, pleads not guilty.

It is ordered that the cause be, and it hereby is, continued to July 1, 1946, at 10 A. M., for setting for trial before Judge Beaumont.

15 In United States District Court

[Title omitted.]

Order setting case for trial

July 1, 1946

This cause coming on for setting for trial of defendant Lim Hoy, charged as Lem Hoy; R. H. Kinnison, Assistant U. S. Attorney, appearing as counsel for the Government; V. P. Lucas, Esq., appearing as counsel for the said defendant, who is absent on bond; it is ordered that the cause be, and it hereby is, set for jury trial on July 30, 1946, at 10 A. M.

16 In United States District Court

[Title omitted.]

Minute order dismissing information

July 30, 1946

This cause coming on for trial of defendant Lim Hoy; Norman Neukom, Assistant U. S. Attorney, appearing as counsel for the Government; V. P. Lucas, Esq., appearing as counsel for the said defendant, who is present on bond; in the absence of the prospective jurors counsel argue to the Court and oral motion to dismiss is made.

At 11 A. M. the jurors who were not impaneled in Judge Ling's court room return into court and it is ordered that they retire to the jury room until called. In the absence of the jurors counsel argue further.

At 11:20 A. M. the jurors return into court and all witnesses and jurors and the interpreter are excused until 2 P. M. Counsel argue further. It is ordered that the motion to dismiss be submitted.

At 11:25 A. M. court recesses until 2 P. M. At 2:06 P. M. court reconvenes and all being present as before, including the defendant, the Court makes a statement. Attorney Lucas makes a statement in answer to the Court's inquiry.

Attorney Lucas now formally moves to dismiss the Information. The Court makes a statement of its views and it is stipulated by counsel that the aliens referred to in the Information were agricultural laborers.

It is ordered that the Information herein be, and it hereby is, dismissed and bond of defendant exonerated.

At 2:20 P. M. the jurors return into court and are excused until notified. Juror C. F. McDermont is excused for the month of August, and Juror Adele M. Stevens is excused for the term.

17 In The District Court of the United States for the Southern District of California, Central Division

[Title omitted.]

Notice of Appeal

Filed Aug. 29, 1946

The United States of America, by its attorneys, J. Howard McGrath, Solicitor General, and James M. Carter, United States Attorney for the Southern District of California, hereby appeals to the Supreme Court of the United States from the judgment of the United States District Court for the Southern District of California (Central Division) entered July 30, 1946, dismissing the information against the defendant, Lem Hoy, charging him with having violated Section 5 of the Act of February 5, 1917 (c. 29, 39 Stat. 879; 8 U. S. C. 139), in that he unlawfully induced, assisted, encouraged and solicited certain alien persons to migrate to the United States as contract laborers, such persons not being lawfully entitled to do so, as defendant well knew.

Dated August 28, 1946.

J. HOWARD MCGRATH,
Solicitor General,
Department of Justice, Washington, D. C.
JAMES M. CARTER,
United States Attorney,
Los Angeles, California.

27 In the United States District Court for the Southern District of California, Central Division

[Title omitted.]

Partial transcript of proceedings

LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1946.

The COURT. It seems to the court that you [Mr. Lucas, counsel for defendant] have limited it, and I think properly so, as to your argument, to the matter of agricultural labor. That is, they must not only be contract laborers, but they must be contract laborers who are admitted for the purpose of performing agricultural labor in the United States for the duration of the war. Otherwise Section 139 [Section 5 of the Immigration Act of 1917,

8 U. S. C. 139] is still in effect. The contract laborers, I think, who are brought in here for the purpose of working on a railroad or doing anything else still would come within the inhibition of the Act.

* * * So if your position is to have force, it must be that it applies only to the exemption or the exclusion, as the word is used here, of those who come to this country as contract laborers for the purpose of performing agricultural labor.

28 I say "exclusion"; I mean exclusion from the terms of the Act; I don't mean exclusion from the country.

* * * * *

I think Mr. Lucas' position is sound. I think the motion to dismiss, if that is the motion——

Mr. LUCAS: Yes, your Honor. I want to comply with the rules. I believe the motion is required under the new rules, and I do now move that the action be dismissed.

The COURT: It would appear to the court that counsel for the government and for the defendant are in agreement that the aliens referred to in the information were agricultural laborers. If it is so stipulated, then such agricultural laborers would seem to be exempt from the provisions of Section 136 of Title 8, U. S. C., for the duration of the war, that is, at the present time, and hence that no offense is stated under 8 U. S. C. A. 139. This is not only the court's view, but it is the view, as well, of the codifiers of the U. S. C. A. The annotation to Section 136 of Title 8 (1945 Cumulative Annual Pocket Part) states that there is "exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see Section 1355 (g) of Appendix to Title 50, War." See also annotation to Section 139 of Title 8 (1945 Cumulative Annual Pocket Part). "Section as inapplicable to importation of farm laborers for duration of war, see Section 1355 (g) of Appendix to Title 50, War."

That comment of the codifier was referred to by Mr. Lucas, but the one which the court first referred to with reference to Section 136 was not mentioned by you, but it refers to the same thing.

Section 1355 (g) thus referred to provides, in part, that "Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title."

I think the motion will have to be granted, and it is granted.

* * * * *

29 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Designation of record on appeal

(Filed Sept. 4, 1946)

To the Clerk of the United States District Court, Southern District of California:

Please prepare certified records on appeal for United States Supreme Court, consisting of the following:

1. Information.
2. Waiver of Indictment.
3. Motion to Dismiss.
4. Notice of Motion to Dismiss Information.
5. Notice of Motion for a Bill of Particulars.
6. Bill of Particulars.
7. Minute Order of June 10, 1946.
8. Minute Order of June 17, 1946.
9. Minute Order of July 1, 1946.
10. Minute Order of July 30, 1946, and

30 11. Reporter's complete transcript of proceedings before the Honorable Campbell E. Beaumont, of July 30, 1946, including argument and court's order dismissing the Information.

Dated September 4, 1946.

JAMES M. CARTER,
United States Attorney,
ARTHUR LIVINGSTON,
Assistant United States Attorney,
Norman W. Neukom,
NORMAN W. NEUKOM,
Assistant United States Attorney,
Attorneys for Plaintiff and Appellant.

31 In the District Court of the United States

[Title omitted.]

Affidavit of service by mail

Ida Helfman, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (his) (her) business address

is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on September 4, 1946 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Designation of Record on Appeal addressed to V. P. Lucas, Attorney-at-law, 215 West 5th Street, Los Angeles 13, Calif., his last known address, at which place there is a delivery service by United States Mails from said post office.

IDA HELFMAN.

Subscribed and sworn to before me, this 4th day of September 1946.

CLERK,
U. S. District Court,
Southern District of California.
[SEAL] By EDW. F. DREW, *Deputy*

33 In the District Court of the United States

[Title omitted.]

Reporter's transcript of proceedings

LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1946.

Appearances

For the Plaintiff: James M. Carter, United States Attorney; by Norman W. Neukom, Assistant United States Attorney. For the Defendant: V. P. Lucas, Esq., 215 West Fifth Street, Los Angeles California.

34 LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1946, 10:00 A. M.

(Other court matters.)

Colloquy between Court and Counsel

The CLERK. No. 18381, United States v. Lim Hoy.
Mr. LUCAS. Ready for defendant.
Mr. NEUKOM. Ready for the government.
The CLERK. This case is for disposition as to count 1.
Mr. NEUKOM. There are two cases there; one just supersedes the other.

The CLERK. No. 18556, United States v. Lim Hoy.

Mr. LUCAS. Now, for what light it may throw on the subject, your Honor has the Annotated Codes with the supplements, and if your Honor will have Title 8 brought to you so that you could follow——

The COURT. Mr. Frankenberger, would you go in there and get Title 8 U. S. C. A.? Is it just one volume?

Mr. LUCAS. Yes. Your Honor already has a copy of the appendix. That is what you gave the court?

Mr. NEUKOM. I gave the court that portion of the appendix that I think you are relying on, 1355—what is it, H?

Mr. LUCAS. No; it is G.

Mr. NEUKOM. That is the one I gave the court; that portion of the Act.

The COURT. Let me run over this, Mr. Lucas.

35 Mr. LUCAS. Very well, your Honor.

The COURT. You may proceed; I have gone over this hurriedly.

Mr. LUCAS. If Your Honor please, Title 8, beginning with 136, has to do with certain excluded aliens. "The following classes of aliens shall be excluded"—then it enumerates idiots, imbeciles, paupers, mental or physical defectives, criminals, polygamists, and (h) is contract laborers. That is what we are concerned with here, so-called contract laborers; (h) is the contract laborers——

The COURT. Do you need a Spanish interpreter in this case?

Mr. NEUKOM. Yes, your Honor.

The COURT. I saw her here and she——

Mr. NEUKOM. She is coming back.

Mr. LUCAS. (i) Is public charges; (k) is persons whose transportation is paid by others; (j)——

The COURT. Pardon me, Mr. Lucas. Let me see the Information, Mr. Frankenberger.

The CLERK. This is 18556?

Mr. NEUKOM. Yes; that is the one we are trying.

The COURT. Are all the counts substantially the same as count 1?

Mr. LUCAS. There is only one count.

The COURT. Very well.

36 Mr. LUCAS. Those subdivisions include, further, stowaways, children under sixteen, illiterates, and so on. Then 139 of Title 8 provides the penalty.

"It shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborers," and goes on.

Now, I want to call your Honor's attention to the codification here, that in the supplement——

The COURT. Do you have any volume?

Mr. LUCAS. I will give it to you in a minute. In the codification you will see that when it comes over to the penalty——

The COURT. Where are you looking now?

Mr. LUCAS. Title 8 in the supplement, 139; page 12 of that supplement. You will find there under this subject of contract laborers it says:

"Section as in applicable to importation of farm laborers for duration of war, see 1355 (g) of Appendix to Title 50, War."

Of course that is just a suggestion. One of the codifiers pointed out to see that section as to its inapplicability, because of the Farm Labor Act of 1943.

Now, I want to turn to the Farm Labor Act of 1943,
37 Section 1355——

Mr. NEUKOM. It starts at 1351, that is the one you mean?

Mr. LUCAS. Yes, sir; that is the beginning. That is about the appropriation and purpose of it and payment to the States, and we go over to subdivision (g) of that Act.

The COURT. Is that under Section 1355?

Mr. LUCAS. Yes, 1355, subdivision (g). The Act itself was passed in 1943, July 9th.

Divisions of this Act shall remain in force only until six months after the cessation of hostilities in the present war.

Now, subdivision (g) says this, your Honor.

"In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head tax * * *"

Now, if your Honor has Title 8 in front of you, you will see that that is one of the requirements for aliens. That is exempted. They don't have to pay head tax. This law amends the alien law to that extent.

38 "exempt from the payment of head tax required by section 2 of the Immigration Act of February 5, 1917."

That is Section 132, your Honor, of Title 8.

"and from other admission charges, and shall be exempt from those excluding provisions of Section 3 of such Act * * *"

That is 136. That is, all these that I have just read to you, they shall be exempt from all of these things. Beginning in 136 we start off with idiots, imbeciles, paupers, tuberculars, mental or

physical defectives, criminals, and so forth, and particularly including contract laborers. All those exemptions of 136 relate to contract laborers. There is a specific exemption, your Honor, in the Farm Labor Act which expressly says that they shall be exempt from those provisions which relate to contract laborers. Any provisions in that law of 1917, as amended, with respect to contract laborers is amended and modified and nullified for the purpose of this Farm Labor Act.

The requirements of literacy, that is in Section 136, and the payment of passage money by corporations, foreign governments and others, all those things are exempt; "and any such resident shall be admitted to perform agricultural labor in the United States for such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General."

Now, what have we got left, your Honor? There is no exclusion in Section 136 any more of contract laborers. The Farm Labor Act has expressly exempted them.

What is left with respect to a contract laborer? A contract laborer can now be brought into the United States under regulations prescribed by the Commissioner and approval by the Attorney General, and the only thing that the law still requires as such, the statutory law, is the bond. All right. If that is the law—and I maintain that it is, your Honor—then I ask your Honor to examine the indictment in this case, or the information, rather, and see if we are charged with violating the law as it now exists.

The COURT. Mr. Lucas, I think I have followed all of your argument except that matter with regard to the bond. Does it now require that a bond be given?

Mr. LUCAS. Yes. The law says that everything with regard to contract laborers written in the law as it stands now is out.

The COURT. I see. And then the parentheses "but not including the exaction of a bond"?

Mr. LUCAS. Not including the exaction of a bond.

The COURT. So that remains there.

Mr. LUCAS. That remains. I contend that and I can't see any way of getting away from that.

If we address ourselves at this point, then, your Honor, to the information in this case, we see that we are charged not with violation of the rules and regulations which may be prescribed by the Commissioner with the approval of the Attorney General, but we are charged that we did unlawfully induce, assist, encourage and solicit, and did attempt to induce, assist, encourage,

and solicit, certain alien persons—naming them—who were not alien contract laborers duly entitled to enter the United States under the Act of February 5, 1917, or to migrate to the United States under any other law of the United States, as the defendant then and there well knew.

In other words, we are now charged with violating the contract labor statute which no longer exists. Or if your Honor is not prepared to follow me to the extent that I am now arguing, the only charge—I say the information doesn't charge a public offense because the law——

The COURT. Mr. Lucas, pardon the interruption.

Mr. LUCAS. Certainly, your Honor.

The COURT. That they were not alien contract laborers——

Mr. LUCAS. Duly entitled to enter. That has to be read in there.

The COURT. That is all part of it?

Mr. LUCAS. Yes; duly entitled to enter.

41 The COURT. In other words, there is no question but what they were contract laborers, but the allegation of the government is that they were not duly entitled to enter?

Mr. LUCAS. That is right. I believe the bill of particulars there specifies that they were contract laborers within the meaning of Section 136.

The COURT. I haven't seen the bill of particulars.

Mr. LUCAS. Therefore, I say, your Honor, after the passage of the Farm Labor Act we have only what the law on the subject would have to be, those rules and regulations prescribed by the Commissioner of Naturalization with the approval of the Attorney General. In other words, the contract labor situation is out. A laborer could come in here, his fare could be paid, he could be induced to enter here, he could be solicited, because it is stated here that it is the policy of our government—the very words are: "In order to facilitate the employment of agricultural workers," that it is the policy of the government to let residents of Central and South America and North America come in here. And to make it easy for them they don't pay a head tax, they don't do anything.

Now, we go farther and show what the duty is of the government, your Honor: "* * * and in the event such regulations require"—that is the regulations which might be prescribed

42 by the Attorney General and the Commissioner of Immigration—"in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other

proof satisfactory to him that such resident is a native of the country claimed as his birthplace."

In other words, our government in this Farm Labor Act has done everything possible to encourage the migration of people to this country during the period of the war for agricultural work.

"Each such resident shall be provided"—when he comes to the border—"with an identification card (with his photograph and fingerprints)"—the government has to give him that—"to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act."

He is even exempt from that.

Now, then, in order that there might not be any mistake about it, your Honor, Congress even went farther and we are now coming to really the most important part of this:

43 "Any such resident admitted under the foregoing provisions who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with Section 20 of the Immigration Act of February 5, 1917."

In other words, they come in here, they come to the border, there is a duty on the government to provide them with an identification card, fingerprints and photographs; they don't have to show the origin of their birth if they have any other satisfactory kind of evidence; and they are encouraged by our government to come in here for the purpose of working in agriculture.

Now, I say to your Honor if that is the status of this law, and clearly it is, how could the government charge any person with a crime?

After they got in here, if they failed to maintain their status, *if they failed to maintain their status*, they could be deported. But until such time as they get in here there isn't anything left.

Let's go one more sentence farther.

"Sections 5 and 6 of such Act"—

That is Title 8, Sections 139 and 142.

The COURT. You are now reading from——

44 Mr. LUCAS. I am reading from Subdivision (g).

The COURT. Sections 5 and 6?

Mr. LUCAS. Yes. Paragraphs 139 and 142—shall not apply to the importation of aliens under this joint resolution.

Now, if your Honor will just look, it is stated right up here at the top of this Information: U. S. C., Title 8, Section 139 Assisting migration of contract laborers.

We have the absolute emphatic words of Congress, your Honor, saying that that section shall not apply. I say to your Honor, in face of that, how has the government stated a cause of action or stated a criminal offense?

It is gone. The specific policy, the exact wording, shall not apply. The contract laborer provision of Title 8 is gone. Then what is the public offense? What is the public offense? What can they charge?

As I interpret it, your Honor, they could have alleged here that the Commissioner of Immigration with the consent and approval of the Attorney General, under this Farm Labor Act, had prescribed certain rules and regulations governing the entry of contract laborers, and that somebody failed to comply with those rules and regulations, or aided and assisted in the violation of those rules. But what they could have done and what they did do are two different things. We can't bolster up this indictment,
45 or, rather, this information by speculation as to what could have been done, but there right in Subdivision (g) is the only place where we find that there could be a law.

Now, it may be that the Commissioner of Immigration has prescribed rules and regulations. It may be that the Attorney General has approved them. But your Honor, that isn't the charge here. So I say, with all due respect to the government and its representatives here, there is no cause of action stated, no public offense, because the law, Section 139 of Title 8, has been expressly said not to apply to the importation of aliens. It just doesn't apply.

Now, we have here a defendant who is charged with assisting aliens to come into the United States contrary to the Act of February 5, 1917, when we have the Act of 1943 expressly repudiating that; not only in words, but in the expressed intention as best that it is possible for Congress to say it.

The COURT. I think you are repeating yourself.

Mr. LUCAS. Yes; for emphasis only, your Honor.

The COURT. We will hear what Mr. Neukom has to say.

Mr. NEUKOM. There are two principles of law, your Honor, that could apply to this case that I want to state before I answer Mr. Lucas. One is the principle of negativing the exceptions, which exists in one statute, and I am going to cite some cases on that.

The COURT. I don't believe you need to cite cases on,
46 that point.

Mr. NEUKOM. The other one is by implied—I mean repealed by implication, which I think I would like to cite some

cases on. But may I point out, your Honor, that the matter that Mr. Lucas was reading from, and which I handed a copy of to your Honor, is all a wartime special measure which was not a penal statute. There is no attempt made in that statute to even define a crime, and the very pertinent portion of that statute is, probably, the last few lines: "shall not apply to the importation of aliens under this title," meaning that if aliens are coming in under this title, your Honor——

The COURT. I think the discussion of this matter better be made not in the presence of those who may be jurors in this case, so the court will ask the members of the panel if they will retire to the jury room, please. Remain there until called by the bailiff.

Mr. NEUKOM. Shall I proceed, your Honor?

The COURT. Yes.

Mr. NEUKOM. Without repeating myself, this was a special wartime measure that counsel read from. It does not attempt to be a penal provision. It merely says that certain sections shall not apply to the importation of aliens under this title.

Now, your Honor will notice that even (g) of this
47 particular section does require that an alien shall be provided with an identification card. It provides where he shall seek entry into the United States; it provides whereby certain proof can be waived; all of which implies that there are still procedures or requirements of these special agricultural workers which have to be complied with before they can get in. In other words, there is no effort made in this act to take away the effect of Section 139, the penal section, which has to do with a person or corporation or any one——

The COURT. Read 139.

Mr. NEUKOM. "It shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage or solicit the importation or migration of any contract laborer or contract laborers into the United States * * *" and then there were certain exceptions.

Now, the point, your Honor, is Congress had this in their mind, and they did not see fit, in passing this special bill to get laborers in at the time when we needed them, they did not see fit to take away that particular penal section.

The COURT. Do you have any discussion of this case?

Mr. NEUKOM. There is no case directly on point. I think you will agree.

Mr. LUCAS. I think that Arizona case is the only one.

48 Mr. NEUKOM. That was a different proposition. That Arizona case was a matter of facts.

Your Honor, I am going to cite to you some statutes to give you the background of this proposition, from which you can see that there was a special framework set up in our agreement with Mexico. There was a Treaty of August 4, 1942, and this treaty can be found on page 1765 of the United States Statutes at Large, Volume 56, 1942; and also an amendment to that treaty can be found on page 1158 and the following pages of Volume 57, 1943, United States Statutes at Large, starting 1158, which sets up an elaborate program of how these Mexicans are to be brought in and what is to be done, and what was the agreement between Congress and between the nations at the time.

I merely refer to those because of the background of this thing, Congress hasn't seen fit to say, when they set up this special thing, "Why, we are repealing these penal provisions."

The COURT. I think your position is, in substance, this, then, Mr. Neukom; that merely because contract laborers have come into the United States does not mean that they have come under the provisions of Section 1355 (g), Title 50, U. S. C. A.?

Mr. NEUKOM. That is my point in a nutshell. And I will cite the cases on repeal by implication and say nothing about them: United States v. Borden Co., 308 U. S., at page 188, on page 198 is the pertinent language. This was an agri-

49 cultural marketing agreement as compared with the Sherman Antitrust Act, as to whether there was repeal by implication.

I am not going to discuss that, your Honor.

Another case on the point is a very late case, United States v. Serpico, 148 Fed. (2d) 95. It is February of 1945. It is the second circuit.

That case had to do with the gasoline war coupons and the defendants were prosecuted under the old counterfeiting statutes, and they claimed that the War Powers Act which set up the coupon proposition was the only means under which they could be prosecuted, and they could not be prosecuted under the counterfeit statute, the old statute. The court swept that aside and stated there was no repeal by implication; that repeal by implication is not favored, and as long as the two statutes are standing, why, the courts will honor both.

Additional discussion on repeal by implication, without reading any of the cases, can be found in Federal Digest, Volume 59, under Statutes, starting with Section 158, and also in the supplement, and going on for the several sections there that discuss similar principles of law as to whether or not there has been a repeal by

implication, and on the question as to whether there is a direct repugnancy between the two statutes.

The COURT. The court wouldn't have time to go into all those statutes now.

50 Mr. NEUKOM. I think the two I have cited are directly on point.

The COURT. Do you want to reply?

Mr. LUCAS. Yes. This isn't a matter of repeal by implication. Counsel may feel that way, but that only serves to confuse your Honor.

Here is where the subsequent statute has suspended the operation of a previously existing and concurrently existing statute, not by implication, but by express language.

Your Honor has indicated that by—at least, my interpretation of your Honor's remarks is that you can bring contract laborers in now in violation of Section 139.

The COURT. I just asked if that was Mr. Neukom's position.

Mr. LUCAS. Let's look at that. Let's see what this law says, your Honor, and refresh our minds as to what Congress said is exempt.

People desiring to come in as agricultural laborers shall be exempt.

That is the word. They might have used some other language and said, "It is hereby repealed or suspended"; but Congress said—shall be exempt from the payment of head tax and from other admission charges, and shall be exempt from those excluding provisions of Section 3 of such Act, Title 8, Section 136, those excluding provisions which relate to contract laborers.

51 You just can't bring them in any more says the law. There isn't any such thing as a contract laborer as defined in 136. They are exempt from all of those things. They are no longer there.

Further on it says you can't prosecute them under 139, because 136 no longer exists.

The only thing, as I say, your Honor, that could possibly be left under the Farm Labor Act of 1943, is that the Commissioner of Immigration, with the approval of the Attorney General, promulgated and prescribed regulations, and those regulations were violated. But that is a far cry from charging a man with violating the law of 1917, as is done in this Information, and putting him on his proof, when the law says the Farm Labor Act has been exempted, they are exempt from it, it is the policy of the law to encourage it.

Of course, Congress knew that there were regulations and laws covering the importation of workers here, but they said, "We want

to do away with it, we want to suspend it for this short period of the war, however long it may be, and, it is still in existence, we are going to suspend it, going to exempt it." And this law carries with it its own ending date; six months after. It shall not exist longer than that. So what Congress did is they said, "We want agricultural workers in here; we want all these people from Central and South America to come in here——

52 The COURT. What did Judge Yankwich say when you presented that on your first argument?

Mr. LUCAS. Judge Yankwich listened very attentively to that, but he said in view of the fact of the loose language of this indictment that my demand for a bill of particulars should be allowed, and it was allowed, and that bill ought to be in here, your Honor, because I have been served with a copy of it. He said, We will see what this bill will bring forth. And the bill brought forth that startling bit of information that a man by the name of Romero wrote a letter in Spanish to three Spaniards down in Mexico, asking them to come in here, and if they had any trouble when they got to the border that he would put up a bond for them. I say "he." I don't want to be misunderstood. Romero wrote the letter but signed Lim Hoy's name to it, that the bond would be put up.

If there is anything left in that Act, your Honor, it is only that bond. That is why Judge Yankwich said, "I am going to make them specify," and he allowed every request in my demand for a bill.

If your Honor will see that there, then the translation of a Spanish letter showing that the bond was to be put up.

I am not going to discuss the question of Romero writing in Spanish a letter to a Spaniard in Mexico, but clearly those people to whom the letter was addressed fall within the statute where it says they are to be from Central, South and North

53 America. They are subjects of Mexico, and within that statute, and it is not illegal to encourage them or assist them or to bring them in here in any way.

The COURT. Mr. Lucas, I think we had better call this jury down and excuse them, the members of this panel, until this afternoon.

Mr. NEUKOM. Mr. Calverley happened to drop in, your Honor. He was present at the other argument. I don't know what took place there.

The COURT. When Mr. Lucas gets through we will ask Mr. Calverley.

Mr. LUCAS. I will yield to Mr. Calverley at any time, your Honor.

Mr. NEUKOM. He just happened to drop in. I didn't happen to be present.

The COURT. Do you want him to make any statement?

Mr. NEUKOM. If your Honor wants any understanding of what took place.

The COURT. I assume we have already heard exactly what was said. Mr. Lucas stated it. Did you hear what Mr. Lucas stated?

Mr. CALVERLEY. I recall the substance of it. As I recall, Mr. Lucas' statement is substantially correct. Judge Yankwich didn't discuss it at length when we submitted it. He didn't from
54 the bench, as I recall. He stated that he believed that the Information set forth an offense, and that there was not a repeal in this case, because the Farm Surplus Supply Appropriation Act, I believe is the title of it, did not repeal the previous statute that had been in effect for a good many years, but the effect of that Farm Surplus Supply Appropriation Act did raise, make certain exceptions, which if applicable——

The COURT. I understand Mr. Lucas doesn't claim there was a repeal, but that it specifically excludes certain things. Did Judge Yankwich have that in mind?

Mr. CALVERLEY. That is the reason he granted the motion for a bill of particulars. He stated that he wanted the bill to set forth whether or not these aliens here were within the exempted class, and he granted the motion for a bill of particulars with that statement, as I recall it.

Mr. LUCAS. That is right. And the inquiry was were they or were they not——

The COURT. Just a moment.

Mr. CALVERLEY. That is, in general, as I recall it.

Mr. LUCAS. I am sorry, your Honor. I thought he was through.

The COURT. You ladies and gentlemen whose names have been called as prospective jurors are now excused, and you may return at 2:00 o'clock this afternoon. All the witnesses are like-
55 wise excused, and the interpreter. Return at 2:00 o'clock this afternoon.

Have you gentlemen finished your presentation?

Mr. LUCAS. There is just one think I would like to advert to for a moment, because it explains the question your Honor asked of Mr. Calverley. The Information, your Honor, says that they were not contract laborers, and then goes on within the meaning, and so forth. So the demand for the bill then was the specification whether or not they meant by this Information that they were or were not contract laborers. Because if they are contract laborers, they are expressly exempt under this Farm Labor Act. So that is what Judge Yankwich, I feel, had in mind when he allowed this entire bill; it was a clearcut issue before the court as to whether or not the government contended that they were contract laborers or they were not contract laborers within the meaning of the Act.

So he granted the bill, and Item IV of the bill says:

"In answer to the request contained in paragraph 2, plaintiff specifies that no express contract is involved. The persons named in the Information are contract laborers within the meaning of Section 136 (h), Title 8 * * *", and they were offered and promised employment.

That is the very meat of the question. We now have it, after the bill was filed, that the government contends that they were in truth and in fact contract laborers.

56 The COURT. Was it pointed out to the judge that in parentheses under the word "Information" on the face of the Information is the following: "U. S. C., Title 8, Section 139 Assisting migration of contract laborers." Did he still have some doubt as to whether they referred to contract laborers after reading that?

Mr. LUCAS. I couldn't answer that question, your Honor. But, you see, the unfortunate wording up here was that "assist * * * certain alien persons to migrate to the United States as contract laborers," and then goes on and names them, and "who were not alien contract laborers * * *." There is an apparent, of course, contradiction there. And it was my position that if they were contract laborers, and I was construing it on my motion to dismiss, to quash, as indisputably the fact was that the government was contending that they were contract laborers, and the court examined both the Farm Labor Act——

The COURT. Then he ordered the bill of particulars?

Mr. LUCAS. Then he ordered the bill of particulars, with the privilege, of course, of renewing my motion after the bill came in, and indicated what the position of the government was with regard to these people. Maybe it is regrettable that I didn't at some prior time before this matter came up on the trial date make this motion.

The COURT. In any event you have now. The matter may
57 be submitted. Return at 2:00 o'clock. Court will recess until that time.

Mr. NEUKOM. Your Honor, I will hand my proposed instructions to the clerk. They are very short.

(Whereupon, at 11:25 o'clock a. m., a recess was taken until 2:00 oclock p. m. of the same day.)

58

LOS ANGELES, CALIFORNIA,
Tuesday, July 30, 1947, 2:00 P. M.

The CLERK. No. 18556, United States v. Lim Hoy.

Mr. LUCAS. Ready for defendant.

Mr. NEUKOM. Ready for the Government.

The COURT. Mr. Lucas, just before noon today I called Mr. Neukom. I didn't like to discuss the matter in your absence, but I

wanted to be sure about a particular part of this. I looked over the Information very carefully, and the bill of particulars. You stated that the bill of particulars enlightened you as to the facts; that is, that these contract laborers were brought here for the purpose of doing farm work, agricultural labor. I find nothing in the bill of particulars which so indicates. I asked Mr. Neukom, and he stated that that is a fact, though, that these are farm laborers.

Without that statement, it seems to the court that we have just exactly the same situation now that was presented to Judge Yankwich. Section 139 was not repealed, and it remains in full force and effect, except insofar as there may be an exclusion or an exemption from the provisions of that section by reason of Section 1355 (g) of Title 50 U. S. C. in the appendix.

Did the court state your position correctly, that is, that you stated that you were enlightened by the bill of particulars as to the nature of the laborers?

Mr. LUCAS. I don't want to be guilty of splitting hairs
59 with the court. What the enlightenment was that we received, that the defendant received from the bill of particulars, was this—that the government disclosed its position in their bill of particulars by stating in paragraph IV that the persons named in the Information are contract laborers within the meaning of Section 136, Subdivision (h), Title 8, in that they were offered and promised employment in this country by the defendant.

In other words, the Information as it is alleged, taking the words of the Information, did not make it clear whether the government contended that the named persons in the Information were contract laborers within the meaning of Section 136, Subdivision (h).

The COURT. That is clear, then, if that was your position. But I thought it was your position, and indeed I am sure it was your argument, that in view of the provisions of Section 1355, Subdivision (g), that this has no application for the duration of the war to those who are contract laborers admitted for the purpose of performing agricultural labor. That is your argu ent, isn't it?

Mr. LUCAS. Yes. But we must go farther, your Honor. Section 1355, Subdivision (g), expressly says that contract laborers within the meaning of Section 136 (h) of Title 8 are exonerated or exempt, or suspended, whatever word we use. We find that
60 the Farm Labor Act says that the contract laborers within the meaning of that section are not prohibited from entry.

The COURT. Then it seems to the court——

Mr. LUCAS. And all of the requirements——

The COURT. Let me interrupt you just a minute.

Mr. LUCAS. Certainly, your Honor.

The COURT. It seems to the court that you have limited it, and I think properly so, as to your argument, to the matter of agricultural labor. That is, they must not only be contract laborers, but they must be contract laborers who are admitted for the purpose of performing agricultural labor in the United States for the duration of the war. Otherwise Section 139 is still in effect. The contract laborers, I think, who are brought in here for the purpose of working on a railroad or doing anything else still would come within the inhibition of the Act.

Mr. LUCAS. That is right.

The COURT. So if your position is to have force, it must be that it applies only to the exemption or the exclusion, as the word is used here, of those who come to this country as contract laborers for the purpose of performing agricultural labor.

I say "exclusion"; I mean exclusion from the terms of the Act; I don't mean exclusion from the country.

I don't think the court cares to hear anything further,
61 Mr. Lucas, from you.

I think Mr. Lucas' position is sound. I think the motion to dismiss, if that is the motion——

Mr. LUCAS. Yes, your Honor. I want to comply with the rules. I believe the motion is required under the new rules, and I do now move that the action be dismissed.

The COURT. It would appear to the court that counsel for the government and for the defendant are in agreement that the aliens referred to in the information were agricultural laborers. If it is so stipulated, then such agricultural laborers would seem to be exempt from the provisions of Section 136 of Title 8, U. S. C., for the duration of the war, that is, at the present time, and hence that no offense is stated under 8 U. S. C. A. 139. This is not only the court's view, but it is the view, as well, of the codifiers of the U. S. C. A. The annotation to Section 136 of Title 8 (1945 Cumulative Annual Pocket Part) states that there is "exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see Section 1355 (g) of Appendix to Title 50, War." See also amortation to Section 139 of Title 8 (1945 Cumulative Annual Pocket Part). "Section as
62 inapplicable to importation of farm laborers for duration war, see Section 1355 (g) of Appendix to Title 50, War."

That comment of the codifier was referred to by Mr. Lucas, but the one which the court first referred to with reference to Section 136 was not mentioned by you, but it refers to the same thing.

Section 1355 (g) thus referred to provides, in part, that "Sections 5 and 6 of such Act shall not apply to the importation of aliens under this title."

I think the motion will have to be granted, and it is granted.

Mr. LUCAS. At this time, if the court please—you will undoubtedly have noticed that the government first indicted Lim Hoy for this identical offense——

The COURT. Is this going to take any more time?

Mr. LUCAS. No.

Mr. NEUKOM. No. Your Honor, if you rule there isn't sufficient on one, both should go.

Motion to dismiss and order thereon

Mr. LUCAS. I just want to make the formal motion that the case of United States v. Lim Hoy, No. 18381, which is just being carried here, no plea or anything else having been entered to it, that it be dismissed.

The COURT. What have you to say?

Mr. NEUKOM. I have no objections, your Honor. This is a superseding indictment.

Mr. LUCAS. Yes; a superseding Information to the
63 indictment.

Mr. NEUKOM. Our office wasn't satisfied with the first one, and they filed another one. After all, the one you have ruled on is the only case we were going to proceed on. Although I respectfully state I differ.

The COURT. Yes, you are entitled to that, Mr. Neukom.

Mr. LUCAS. I just move that the action be dismissed and the bond exonerated.

The COURT. As long as you state you had no intention of proceeding under it, Mr. Neukom——

Mr. NEUKOM. No objections to the dismissal of the first one, your Honor.

The COURT. Very well. It is also ordered and the bond is exonerated in this case.

Mr. NEUKOM. The witnesses will all be excused, your Honor?

The COURT. The witnesses are now excused.

64 [Reporter's certificate to foregoing transcript omitted in printing.]

[Title omitted.]

[File Endorsement Omitted]

65 In the District Court of the United States

Stipulation of understanding had at time of hearing on motion to dismiss (July 30, 1946), and order certifying said stipulation as part of said proceedings.

Filed Oct. 2, 1946

Whereas, on July 30, 1946, before the Honorable Campbell E. Beaumont, United States District Judge, the defendant did then and there move and make its oral motion to dismiss the herein Information, upon the grounds that the same did not charge a public offense nor state a cause of action under the laws of the United States, and as to all other grounds then urged, as is more fully reflected from the Reporter's Transcript of said proceedings of said date; and

Whereas, to remove any possible confusion as to the understanding then and there had between counsel for the defendant, Lem Hoy, and counsel for the plaintiff, United States of America, and, so as to clarify said understanding, it is now

Stipulated, by and between V. P. Lucas, attorney for the defendant, Lem Hoy, alias Lim Hoy, and James M. Carter, United States Attorney, and Arthur Livingston and Norman W. Neukom, Assistant United States Attorneys, attorneys for the plaintiff, that at the time the defendant did so orally move the court

66 to dismiss said Information on the grounds therein urged, it was understood and agreed between plaintiff and the defendant, and by the court hearing said motion, that the contract laborers referred to in said Information, to wit: Camilo Cortez-Becerra, Ignacio Cortez-Becerra, and Sebastian Cortez-Torres, were, for the purpose of said motion stipulated to be alien contract laborers who were brought in or imported into the United States from Mexico, for the purpose of doing farm work, that is, agricultural labor.

V. P. LUCAS,
Attorney for Defendant,
JAMES M. CARTER,
United States Attorney,
ARTHUR LIVINGSTON,
Assistant U. S. Attorney,
Chief of Criminal Division.
NORMAN W. NEUKOM,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Order certifying the foregoing stipulation as a part of the herein proceedings

Upon reading and filing the foregoing Stipulation, and good cause appearing therefor,

It is hereby ordered that the foregoing Stipulation, together with the Reporter's Transcript of said proceedings, is a part of the proceedings and reflects the stipulation and understandings had by plaintiff, the defendant, and the court in hearing said proceedings, to wit, the oral motion to dismiss the herein Information, which motion was made on July 30, 1946. The same is hereby certified as a part of said proceedings.

Dated this 2nd day of October 1946.

C. E. BEAUMONT,
United States District Judge.

67 In the District Court of the United States

[Title omitted.]

[File endorsement omitted.]

Supplemental designation of record on appeal

Filed Oct. 3, 1946

To the Clerk of the United States District Court,
Southern District of California:

Please prepare and supplement the record on appeal for United States Supreme Court, by making a part thereof the following:

1. Stipulation of Understanding had at Time of Hearing on Motion to Dismiss (July 30, 1946), and Order Certifying Said Stipulation as Part of Said Proceedings.

Dated October 3d, 1946.

JAMES M. CARTER,
United States Attorney,
ARTHUR LIVINGSTON,
Assistant United States Attorney,
Norman W. Neukom,
NORMAN W. NEUKOM,
Assistant United States Attorney,
Attorneys for Plaintiff and Appellant.

68 In the District Court of the United States

STATE OF CALIFORNIA,
County of Los Angeles, ss:

La Rue Hallmark, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Los Angeles County, California; that his business address is 600 Post

Office and Court House, Los Angeles, California; that he is over the age of eighteen years, and not a party to the above-entitled action;

That on October 3, 1946, he deposited in the United States Mails in the Post Office at Temple and Main Streets, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Supplemental Designation of Record on Appeals addressed to V. P. Lucas, Attorney-at-Law, 215 West 5th Street, Los Angeles 13, Calif., at which place there is a delivery service by United States Mail from said post office.

LA RUE HALLMARK.

Subscribed and sworn to before me, this 3d day of October 1946.

[SEAL]

GEORGE M. BRYANT,
Notary Public, in and for the County of Los Angeles, State of California.

69 [Clerk's certificate to foregoing transcript omitted in printing.]

70 In the Supreme Court of the United States

October Term, 1946

No. 585

Statement of points to be relied upon and designation of record

Filed Oct. 24, 1946

Pursuant to Rule 13, paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The district court erred in granting the motion to dismiss the information.

2. The district court erred in holding that the information did not state a federal offense.

3. The district court erred in holding that Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, as extended, unqualifiedly exempted the importation of agricultural laborers from the provisions of Sections 3 and 5 of the Immigration Act of 1917, excluding contract laborers from admission into the United States and punishing the importation of such laborers, regardless of whether the importation of agricultural laborers was ef-

71 fected pursuant to the conditions of the former statute and the regulations thereunder.

4. The district court erred in holding that appellee's acts and conduct charged in the information were excepted from the pro-

hibitions of the Immigration Act of 1917 by virtue of the provisions of Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, as extended.

Appellant deems the entire record, as filed in the above-entitled case, necessary for the consideration of the points relied upon.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

I hereby certify that I have this day served a copy of the foregoing Statement of Points to be Relied Upon and Designation of Record on V. P. Lucas, Esquire, 215 West Fifth Street, Los Angeles, California, Attorney for Appellee, by mailing a copy to him at his business address.

J. Howard McGrath,
J. HOWARD MCGRATH,
Solicitor General.

Dated at Washington, D. C., this 18th day of October 1946.

72 Supreme Court of the United States

No. 585, October Term, 1946

Order noting probable jurisdiction

October 28, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

[Endorsement on cover:] File No. 51449. Southern California, D. C. U. S. Term No. 585. The United States of America, Appellant *vs.* Lem Hoy, alias Lim Hoy. Filed October 7, 1946. Term No. 585 O. T. 1946.

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